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BOOK REVIEWS

LIFE INSURANCE AND ESTATE TAX PLANNING. William J. Bowe. Nashville, Tennessee: Vanderbilt University Press, 1950. Pp. 92.

There have been debates among the learned through the ages respecting the economic, sociological, and ethical impact of the "right" to inherit property. Bentham was probably among the first to suggest that, providing there will be no impairment of productivity, the maximum happiness of society would be realized by distributing wealth equally. Only the years can reveal the degree of wisdom in such a course, but apparently our present-day tax planners have chosen to ignore the proviso clause of the aforementioned concept and have concentrated on a simple method to achieve economic equality; namely, by taxing accumulated private wealth out of existence. However, for each mind devoted to the development of this end, there is a counterpart concerned with and devising methods of avoiding, or at least delaying, the inevitable consequence of such a program. Not the least of these is Professor Bowe, who has written powerfully respecting tax avoidance by proper estate planning.¹

In this slim volume, he tries again to help resolve some of the more intricate problems of estate tax planning, this time restricting his discussion entirely to aspects of the use, or failure to use, any of the various forms of insurance in an estate plan. Even so, it would appear that, in this book, the author fails to live up to the promise of previous writings. Obviously, in any short work, there is a tendency toward generality, but the material here found, although in many ways helpful, is much too general to afford any concrete help.

It is all too often assumed, in the text, that an ideal state of affairs will continue to exist in the estate being planned, so that the suggestions offered often fail to cope with the potentialities of reality. For example, there is quite a discussion of the use of insurance as a means of buying up a business interest in such a manner as to provide liquidity for the estate and continuity of management in the decedent's beneficiaries. In particular, the author outlines the device whereby a closely-held corporation, holding insurance on the decedent, may buy up his shares to the advantage of one and all. Nowhere is there a suggestion that it might be unlawful for the corporation to buy its shares because of statutory prohibition or an impairment of the capital structure at the time of the

¹ See, for example, Bowe, *Tax Planning for Estate* (Vanderbilt University Press, Nashville, Tennessee, 1949), reviewed in 28 CHICAGO-KENT LAW REVIEW 186.

decedent's death.² What then is the worth of the plan? There is no desire to intimate that the book will not prove of interest to the practitioner, the trust man, and the insurance underwriter. There is, however, occasion to feel that the true utility of the work has been sacrificed for the sake of brevity.

THE LAW OF LABOR RELATIONS. Benjamin Werne. New York: The Macmillan Company, 1951. Pp. xiv, 741.

Specialization has progressed, in some fields of law, to such an extent that the general practitioner of today is apt to be considered a dodo or else finds that he wears the emblem of his general practitionership with discomfort. Law schools must, of necessity, prepare the student for full legal life but, within the limits of crowded curricula, are unable to include more than a few particular legal subjects among the general-knowledge courses.¹ Modern society, however, treating law as a means of social control, finds it impossible to ignore the overlap, if any there be between generalized and particularized subjects, and expects lawyers to go afie!² just as governments call on others beside political scientists for aid.³ This particularizing of law, with its tendency to make the subject introvertistic, leads to congeries of theories and rules pertaining solely to specific fields. Eventually, the point is reached where even the proverbial Philadelphia lawyer throws up his hands and concedes defeat.⁴ The specialist's specialist then takes over and the general practitioner finds

² Scovill, "Treasury Stock in its Relation to Earned Surplus," 21 CHICAGO-KENT LAW REVIEW 328-32. For a more pragmatic approach to stock purchase plans, see Davis, *Life Insurance and Business Purchase Agreements* (National Life Ins. Co., Montpelier, Vermont, 1948), 2d Ed.

¹ See Currie, "The Materials of Law Study," 3 J. Legal Ed. 331 (1951), for a discussion of the problems arising from the antagonisms inherent in the general and the particular approaches.

² The New York Times, under date of Dec. 20, 1950, reports that Federal District Judge Wyzanski appointed a Harvard assistant professor of economics as his law clerk to assist him in the anti-trust suit against the United Shoe Machinery Corporation.

³ The Full Employment Bill of 1946 makes economists part and parcel of top governmental policy formulation. Governor Dewey, creating the New York State Crime Commission, called together a practicing lawyer, a law school dean, a retired educator, a former police commissioner, and a one-time diplomat.

⁴ Mr. Chief Justice Hughes, in *Panama Refining Co. v. Ryan*, 293 U. S. 388 at 412, 55 S. Ct. 241, 79 L. Ed. 446 at 454 (1935), noted how all the parties and the lower court were unaware of the presence of certain amendments which had been made to the Petroleum Code because of the absence of a requirement for their publication in any particular place. As a probable consequence of his remarks, the Federal Register Act was passed.

he is ousted from another field of revenue.⁵ Under these circumstances, the average lawyer who has been retained in a matter falling within one of these narrow fields either associates himself with a specialist or attempts to work alone, endeavoring to combat a specialist on the other side. As their respective armories are not stocked alike, the odds are weighted heavily against the uninitiated. To prepare himself, the tyro seeks for new and specialized weapons or tools. The plethora of texts, guides, handbooks, digests and the like attest to the prevalence of these conditions and to the effort that has been made to find some way out of the difficulty.

Labor law is no different from other specialties in this regard. Except on such points as relate to social legislation generally,⁶ or to injunctions and picketing⁷ and other areas where the judicial process is involved, the field of collective bargaining has itself become specialized to a degree not dreamt of in pre-Wagner Act days. At first, when bargaining did not resemble a name-calling jamboree, the prime issues were union recognition and wages and hours. Following the Wagner Act, experience with fringe incursions began to develop. The activities of the War Labor Board and of similar emergency agencies added little that was new. But since 1945, and under modern conditions, bargaining has become of importance in areas relating to pensions, guaranteed work, grievance procedure and arbitration as well as over the point of disclosure of secret financial data to unions. Save in certain areas of the South, the principle expressed in Section 7 of the Taft-Hartley Act has been generally accepted and followed. But recognition does not, *ipso facto*, produce a trade agreement. It is here that labor and management today engage in their most heated controversies. Whether lawyers will be an aid or an obstruction in collective bargaining is presently unimportant⁸ for the fact is that the participants generally utilize their services.

Unfortunately, experience gained in general practice in the negotiation of ordinary contracts is not of great value in this particular area for collective bargaining has created a jargon and an approach that is peculiarly its own. The general practitioner needs must bring the specialist's

⁵ The resentment may lead to suits such as the case of *In re Bercu*, 299 N. Y. 728, 87 N. E. (2d) 451 (1949), wherein accountants were prohibited from giving legal advice on tax questions. The New York County Lawyers Association, through its Chairman of the Committee on Unlawful Practice, discloses that another front is being opened with an investigation against estate planners because there is a "fringe of so-called 'experts' who are neither insurance men nor lawyers" deluding the public. See 7 Bar Bull. 16 (1949).

⁶ See the author's article on "Planning and Teaching a Course in Labor Law," to appear in the Summer, 1951, issue of the *Journal of Legal Education*.

⁷ Forkosch, "Equity versus Taft-Hartley Injunctions," 24 *Temp. L. Q.* 277 (1951).

⁸ See Sherman, "The Law Student and Collective Bargaining," 3 *J. Legal Ed.* 445 (1951).

tools to bear, else he will not be called again. How, then, can Lawyer X obtain the essential "know-how"? He is experienced with the use of treatises, texts and form books developed in other areas of the law, but encyclopedic treatises on labor law will provide no help. It is for just this reason that lesser studies have been made by Dunlop,⁹ by Tucker,¹⁰ and by Shulman and Chamberlain,¹¹ to mention only three, in addition to material which has been compiled in loose-leaf services and legal magazines. That all such varied attempts have not been completely successful is attested to by the publication of the instant volume.¹²

There may be some degree of misnomer in the title of this book if the reader is led to believe that the work was intended to discuss all of labor's ramified efforts to better itself. It is primarily the fields of the Taft-Hartley Act, of collective bargaining, and of the trade agreement which Mr. Werne has entered, but even these would, ordinarily, be too wide to cover adequately in a single volume. The book is one, however, geared to practical use and develops four principal topics, *i. e.* representation, prevention of unfair labor practices, rights and duties of management and unions, and collective contracts. The space allotted to each, approximately one-third for the first two, and one-third each for the third and fourth, gives some indication of the author's opinion as to their relative importance.

The first three parts deal almost exclusively with decisions of the National Labor Relations Board. The discussion is pithy and presents the law both succinctly and well. While the layman might find himself lost in the midst of the plentiful documentation, the average lawyer should find much to aid him to reach a particularized understanding in this field. But the major questions he will be inclined to ask will be what is the present status of the law, how up-to-date is the material offered? Although the book is a 1951 publication, it stops short at about September, 1950. Later Board determinations have tended to make the work outmoded, but definitely not obsolete.

For example, in the discussion of secondary boycotts, there is no mention of the Sterling Beverage or the Schultz Refrigerated Service cases¹³ although the Board made a major policy modification in Senator

⁹ Dunlop, *Collective Bargaining Principles and Cases* (Chicago, Richard D. Irwin, 1949).

¹⁰ Tucker, *Guide to National Labor Relations Act* (Chicago, Commerce Clearing House, 1947). Miss Tucker's excellent compilation, unfortunately, is not up to date.

¹¹ Shulman and Chamberlain, *Cases on Labor Relations* (Brooklyn, The Foundation Press, Inc., 1949).

¹² The author is Adjunct Professor of Industrial Relations, Graduate School of Business Administration, New York University.

¹³ 90 N. L. R. B. 75 (1950) and 87 N. L. R. B. 82 (1950), respectively.

Taft's outright condemnation by accepting to some slight degree the New York "unity of interest" doctrine.¹⁴ Also missing, although the omission is understandable, is reference to the fact that the Board, in October, 1950, promulgated standards or requirements to be met before it would exercise jurisdiction over interstate enterprises too small in character to warrant the utilization of the Board's limited resources.¹⁵ There would also seem to be no mention of the holdings in the Hughes, Hanke and Gazzam cases which validate state limitations upon union picketing.¹⁶ The time factor would make some of these omissions understandable, but others are not open to that explanation. The presence of error may also be noted. The author states, at pages 237-8, in relation to the discussion of strikes and boycotts under Section 8(b)(4)(A-C), that it is the function of the Board's "regional director" to make application for a temporary injunction, pursuant to Section 10. In fact, the statute specifically provides for an independent General Counsel whose duty it is to make such decisions and whose refusal to issue a complaint is final and non-reviewable. It is more likely that the author meant the "regional attorney" under the General Counsel rather than the "regional director" of the Board.

Despite these criticisms and other time and error defects, the overall view of the volume is generally good. True, the first three parts offer nothing the practitioner cannot get elsewhere but the manner of presentation and organization is competent and commendable. It is in the fourth part, dealing with collective contracts, that the prime worth of the book is demonstrated. It contains a capable discussion of both the theories and actualities underlying collective bargaining, covering not only the preparation therefor and the drafting thereof but also the operation thereunder. Typical contractual clauses have been offered in support of both the drafting and the operating chapters.¹⁷ If a work could be said to concentrate on any one topic so as to place other topics in the shade, the

¹⁴ See Forkosch, "Secondary Boycotts Under the Taft-Hartley Law," 1 Labor L. J. 1009 (1951), for a discussion thereof.

¹⁵ National Labor Relations Board, Release No. R-357, digests these standards. The standards were applied to a limited degree in the secondary boycott case of Jamestown Builders Exchange, 93 N. L. R. B. 51 (1951). See the writer's forthcoming article entitled "National Labor Relations Board Jurisdictional Requirements in Secondary Boycott Cases," to appear in the April, 1951, issue of Labor Law Journal.

¹⁶ Hughes v. Superior Court, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 985 (1950); International Brotherhood of Teamsters v. Hanke, 339 U. S. 470, 70 S. Ct. 773, 94 L. Ed. 995 (1950); Building Service Employees Internat'l Un. v. Gazzam, 339 U. S. 532, 70 S. Ct. 784, 94 L. Ed. 1045 (1950). As no table of cases appears in the book, a reader would be obliged to examine almost one hundred pages of footnotes to verify this fact. The task would be an impossible one for the busy practicing attorney. The omission should be corrected in a future edition.

¹⁷ It might have been worthwhile to have presented a "typical" completed agreement as an appendix, so that the reader could see the independent clauses tied together into a masterly whole.

emphasis here is clearly on this part. For that reason, the book should recommend itself to Lawyer X, for it provides the essential "know how." While that recommendation is not made entirely without reservation, the book deserves the characterization of being a workmanlike job quite likely to aid the uninitiated. In numerous respects it contains a wealth of information conveniently gathered and ably presented.

MORRIS D. FORKOSCH*

THE CONFLICT OF LAWS: A Comparative Study, Vol. III. Ernst Rabel. Ann Arbor: University of Michigan Law School (Michigan Legal Studies series). Chicago: Callaghan & Company, 1950. Pp. xlvii, 611.

A person who has been privileged to examine the first two volumes of this monumental comparison of the principles relating to choice of law, in those fields where one of two or more systems of law may become applicable, is likely to approach the third volume with preconceived notions as to the excellence of the material which awaits him. He has already, on two occasions, been impressed with the wide learning and indefatigable industry of the author. He has, in like fashion, been led to see a vast panorama of law unfolding according to a highly articulate, well-organized plan. The experience received from reading the textual statement of existing rules, with the frequent illustrations which accompanied the same, and from savoring the author's pungent and incisive analyses thereof have sharpened his expectation to the point where he is eager for more. He is now, by the release of the third volume, assured that his expectations are not to be thwarted or his hopes disappointed in the slightest.

The second volume closed with an entry into the realm of conflict of law as applied to contractual situations in general. It recognized that two principles have come to receive the widest recognition; those of party autonomy, or the right to choose the applicable law, on the one hand, and the so-called "point of contact" doctrine, by which the contract is to be governed by the law most closely connected with its chief features, on the other. The third volume carries that thought forward into a discussion of specialized contract problems such as relate to contracts for the payment of money, the sale of movables and immovables, of agency and employment, including workmen's compensation, of carriage by land and sea, of insurance, and of suretyship, as well as to contractual-like rights and duties arising from unjust enrichment. The book closes with an extended treatment of modification and discharge of contracts by

* Associate Professor, Brooklyn Law School.

such matters as assignment, subrogation, novation, counterclaim and bar by limitation.

There is no sign from the author that he relents, in any way, concerning his attitude against the use of mechanical and ill-fitted rules or the bolstering of obsolete concepts with ridiculous presumptions. He can, and does, still take issue in not infrequent measure with the provincialisms of the Restatement. His mastery of both the processes and the needs of international trade, commerce and finance, his grasp of legal history and legal developments are made evident on every page. It is only fair to say, however, that as the work progresses it becomes more difficult for the reader to follow every thought as the subject matter becomes that much the more complex. Here is no simple black-letter text to while away the student's, or lawyer's, time; more nearly, it may prove to be a challenge he could not meet. He would, though, be the stronger for having made the attempt. If nothing else be gained, he might learn that the American view of the subject is not the only one and, frequently, not the best one either.

WATER RESOURCES LAW, Vol. III. Water Resources Policy Commission. Washington: United States Government Printing Office, 1950. Pp. xviii, 777, paper.

Pursuant to Executive Order, the Water Resources Policy Commission has been engaged in preparing a series of reports relating to the water resources and water needs of the nation. The third of such reports has now been released in the form of a complete review of all existing water-resources legislation. It provides a comprehensive view of the numerous laws, both state and federal, which, regardless of date of enactment or actual impact on the subject, in any way concern the nation's water supply. Prepared in impersonal style, the report assembles a vast body of material relating either to statutory regulation or to development of water use, water power, drainage, flood control, navigation, land use and soil conservation. It is supplemented by extensive tables, indices and summaries.

While many of the points discussed will have slight concern for the mid-western area of the continent, being more important in the west where control of the water supply may be vital to life itself, the summary is one which should receive attention in every part of the nation. The hodge-podge of legislation on the subject alone, as revealed by this study, should call for clarifying action. Waste arising from duplication of effort, if not from direct conflict in responsibility, stands stark on almost every page. Shifts in constitutional emphasis from the exercise of a clear power over interstate commerce to specious reliance on the nebulous general welfare clause bespeak of historical change in the approach to the subject

of development and regulation of water supply. A growth in bureaucratic power is also to be noted, even to the point where administrative discretion in such matters has become of virtually unlimited character.

The raw materials of this report, then, present a picture which discloses urgent need for a major revision in both scope and policy in order that integration might not only eliminate conflicts and duplications in authority but so that the gaps might be filled. The report itself draws the conclusion that the "interests of present and future generations demand it." The legal profession will, undoubtedly, await future recommendations as to the form such revision should take. In the meantime, it has, through this report, been furnished with materials from which it might assemble its own conclusions.

LEGAL DRAFTING. Robert N. Cook. Brooklyn: The Foundation Press, Inc., 1951. Pp. xxxvii, 867.

The "innocent" bystander who will project himself into a stream of flying brickbats at a Donnybrook Fair has no one to blame for the lumps he suffers than himself. Such a "fair" has been raging for over a year between practicing lawyers on the one hand, utilizing the columns of the American Bar Association Journal for their vantage point,¹ and members of the law teaching profession, speaking through the pages of the Journal of Legal Education,² on the other. The pretext, if one is ever needed for a good fight, turns on the capacity, or lack of capacity, on the part of the typical law school graduate to perform the tasks besetting the practitioner the moment he receives the coveted license and undertakes to represent clients. The criticism proceeds, aside from any alleged general lack of ability, from the standpoint that the tyro is ill-equipped to translate his theoretical knowledge of law into the actualities to be faced in the daily routine of the law office.³ The reply when not couched in terms of confession and avoidance, is that the subject matter is not one capable of development in the professional school but must await field training in the actual workshops of the law. This reviewer refuses to expose himself to the dangers adhering to a life in the no-man's

¹ See Roberts, "Performance Courses in the Study of Law," 36 A. B. A. J. 17 (1950); Connor, "Legal Education for What?" 37 A. B. A. J. 119 (1951); and Cutler, "Inadequate Law School Training," 37 A. B. A. J. 203 (1951).

² Compare the papers mentioned in note 1, ante, with Wilson, "A Practical Practice Court Course," 3 J. Legal Ed. 285 (1950); Shestock, "Legal Research and Writing," 3 J. Legal Ed. 126 (1950); MacDonald, "The Professional Aspects of Legal Education," 2 J. Legal Ed. 444 (1950); Miller, "Clinical Training of Law Students," 2 J. Legal Ed. 298 (1950); Cavers, "'Skills' and Understanding," 1 J. Legal Ed. 395 (1949); Kalven, "Law School Training in Research and Exposition," 1 J. Legal Ed. 107 (1948). MacDonald, 2 J. Legal Ed. 444 at 451, states: "... I do not believe that law schools can do very much of real value in this regard, because of their inability to simulate the conditions of actual practice."

land between these armed camps, nor wishes to suffer from the rapid exchange going on between these verbal charges and retorts. There is much to be said on either side.

It would seem as if Professor Cook,⁴ from a similar recognition of the fact that there is some merit to these charges, has worked conscientiously toward a solution. A year or so back, reporting on the development of a course in legal writing at Western Reserve University, he stated that his description thereof was "necessarily a still picture of a growing thing. Only the general directions of this growth have been indicated."⁵ It is now possible, with the publication of his book, to announce that the outlines of the picture and the record of that growth may now be seen more sharply defined.

Here is no form book replete with ill-fitting clauses of ancient vintage awaiting to be assembled by the draftsman into a crazy-quilt vestment for the client's affairs. Here is no style book in composition, stuffed with boresome and pedantic rules concerning syntax, punctuation and the like. But the essence of these things, the large and small principles which should govern legal writing, are presented in stimulating fashion not for the guidance of students alone but for the practicing lawyer too. The materials, as Professor Llewellyn has noted in his introduction, offer a full background, an exploration into the policies and the problems involved in the drafting of a wide variety of legal forms, an elaborate check list of what to look out for, and frequent suggestions for lines of wise action in type after type of transaction. Case law is not neglected, but the emphasis is not thereon. The material is all there; all that remains is to put it to use and the result should silence much of the furor to be found in the cannonading referred to above.

³ Says Roberts, 36 A. B. A. J. 17 at 20, the graduate "... 'passed' contracts, but he never wrote one . . . He may have led his class in wills, yet, he has never prepared one . . . His course in trusts has been similar, but his knowledge of how to prepare the necessary documents for their establishment and execution is even smaller than his knowledge of decedent's estates." Cutler, 37 A. B. A. J. 203 at 204, adds: "All the theory in the world ill equips the lawyer who has all the legal lore at his fingertips, but [who] doesn't know how to draw a summons, a will, a deed or a bill of sale. To know the *cy pres* doctrine . . . is a necessary part of a lawyer's legal background. It is also important that he know how to use the words required in a simple petition to appoint an administrator of an estate." He offers, as his solution, a period of apprenticeship dealing with actual matters in a law office under the supervision of a member of the bar prior to the granting of the license.

⁴ Yes, the author is one of the schoolmen, not of the practitioner class, being a member of the faculty of law at Western Reserve University. He is, but not to his shame, one of those whom Connor, 37 A. B. A. J. 119, would point to with a degree of scorn for having "only one year of practice" or for revealing "no experience in the practice of law at all!" The author's practical experience is somewhat broader, but not by much. See biographical details in Teachers' Directory, Association of American Law Schools, 1950-51, p. 83. The book in question should prove that the theorist can also get practical.

⁵ Cook, "Teaching Legal Writing Effectively in Separate Courses," 2 J. Legal Ed. 87 (1949), at 91.